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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLFO JUAREZ,

Defendant and Appellant.

B244037

(Los Angeles County  
Super. Ct. No. NA089863)

APPEAL from a judgment of the Superior Court of Los Angeles County, James B. Pierce, Judge. Affirmed.

Carey D. Gorden, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Adolfo Juarez appeals from the judgment entered after a jury convicted him of second degree robbery. Pursuant to the Three Strikes law, the trial court sentenced Juarez to 35 years to life in prison. Juarez's sole contention on appeal is that the trial court abused its discretion by denying his request to strike a prior conviction allegation pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Discerning no error, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *Facts.*

On August 19, 2011, Martin Gonzalez-Ramirez<sup>1</sup> got off work in Long Beach at around noon. As he walked down Loma Street toward a bus stop, he saw Juarez and another man standing near the corner of Loma and 14th Streets. The men made Gonzalez feel uncomfortable, so he crossed the street to avoid them. However, they continued to follow him. Gonzalez stepped into the middle of the street and unsuccessfully tried to flag down a passing car.

Juarez and his compatriot approached Gonzalez. Gonzalez tried to call 9-1-1, but Juarez ripped the phone from Gonzalez's hand. Juarez demanded that Gonzalez give him "everything" or he would shoot him. The second man grabbed Gonzalez's backpack, and Juarez repeated his threat. Gonzalez took out his wallet, and the second man grabbed it. Someone called from a white Chevrolet Tahoe to Juarez and his cohort, urging them to hurry up. Juarez and the other man got in the Tahoe, and it drove off. The robbers made off with Gonzalez's wallet, which contained \$350, his backpack, his telephone, and his camera.

Gonzalez walked back to his place of employment and told his coworkers what had happened. He and two of his coworkers drove around the area to see if they could locate the white Tahoe and the robbers. Luckily, they spotted the car at a traffic signal, alerted a 9-1-1 operator, and followed the Tahoe to a gas station, where Long Beach

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<sup>1</sup> Consistent with the reporter's transcript, we refer to Mr. Gonzalez-Ramirez as Gonzalez.

police officers arrived and arrested the female driver. Police observed Juarez standing nearby, and he ran when he saw them. An officer gave chase, eventually apprehending him. Gonzalez identified Juarez as the robber who had threatened him. His telephone and camera were found in the Tahoe and returned to him. His wallet and cash were not recovered.

## *2. Procedure.*

Trial was by jury. Juarez was convicted of the second degree robbery of Gonzalez (Pen. Code, § 211).<sup>2</sup> After the verdict, Juarez admitted suffering two prior “strike” convictions for robbery (§§ 211, 667, subds. (a), (b)-(i), 1170.12, subds. (a)-(d)) and serving two prior prison terms within the meaning of section 667.5, subdivision (b). The court denied Juarez’s *Romero* motion and sentenced him to a term of 35 years to life in prison. It imposed a restitution fine, a suspended parole restitution fine, a court security fee, and a criminal conviction assessment. Juarez appeals.

## DISCUSSION

*The trial court did not abuse its discretion by denying Juarez’s Romero motion.*

At sentencing, defense counsel made an oral *Romero* motion, asking that the court dismiss one or more of Juarez’s prior strike convictions for robbery. Defense counsel argued that the two prior robberies did not involve violence, and “really boil[ed] down to sort of bullying.” Counsel argued that the prior robberies were not egregious, and cited Juarez’s age at the time of sentencing, 24 years old, as a mitigating factor. The prosecutor countered that Juarez’s crimes were increasing in seriousness; he had threatened to use a gun in the charged crime; he had failed to benefit from a prior grant of probation; and he “just keeps re-offending.” The trial court denied the *Romero* motion.

Juarez contends the trial court’s ruling was an abuse of discretion. We disagree. In the furtherance of justice, a trial court may strike or dismiss a prior conviction allegation. (§ 1385; *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at p. 504;

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<sup>2</sup> All further undesignated statutory references are to the Penal Code.

*People v. Meloney* (2003) 30 Cal.4th 1145, 1155.) A trial court's refusal to strike a prior conviction allegation is reviewed under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) Under that standard, the party seeking reversal must " 'clearly show that the sentencing decision was irrational or arbitrary. [Citation.]' " (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) It is not enough to show that reasonable people might disagree about whether to strike a prior conviction. (*Carmony*, at p. 378.) Only extraordinary circumstances justify a finding that a career criminal is outside the Three Strikes law. (*Ibid.*) Therefore, "the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Ibid.*)

When considering whether to strike prior convictions, the relevant factors a court must consider are "whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The Three Strikes law "not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm . . . . [T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*People v. Carmony*, *supra*, 33 Cal.4th at p. 378; *In re Large* (2007) 41 Cal.4th 538, 550-551.) We presume the trial court considered all the relevant factors in the absence of an affirmative record to the contrary. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

The record before us reveals no basis for concluding that, as a matter of law, Juarez falls outside the spirit of the Three Strikes law. Juarez's criminal history began when he was a juvenile and has continued into his adulthood. Prior attempts at rehabilitation have been unsuccessful. In 2002, when Juarez was 14, he suffered a sustained juvenile petition for felony battery. In June 2007, he was convicted of robbery. In July 2007, he was convicted of taking a vehicle without the owner's permission. He

was placed on probation. In October 2007, three months after being placed on probation, he committed another robbery. He was sentenced to four years in prison. He was paroled in April 2011. Four months later he committed the instant robbery. In short, despite his relatively young age, Juarez's criminal history demonstrates he is "the kind of revolving-door career criminal for whom the Three Strikes law was devised." (*People v. Gaston* (1999) 74 Cal.App.4th 310, 320; *People v. Pearson* (2008) 165 Cal.App.4th 740, 749.)

As the trial court explained: "the court is compelled by the facts in this case not to use its discretion to strike these priors under the *Romero* case. As counsel's indicated, they are in rapid succession. The only reason there's a gap between 2007 and . . . 2011. . . is because . . . he was in state prison during that time. Other than that he'd be out committing more robberies. If I released him today, within six months . . . he would commit another robbery. [¶] And Mr. Juarez does not get it. He refuses to get it. He refuses not to intimidate, not bully other individuals. . . . Mr. Juarez knows no other lifestyle."

Juarez argues that denial of his *Romero* motion was an abuse of discretion because the facts of the current crime were "not egregious"; the robbery occurred during the day; he did not use a weapon; the victim did not suffer any injury; and the victim was not particularly vulnerable. Juarez also avers that with the exception of his prior battery, his other convictions did not involve violence or weapon use. But the fact a majority of a defendant's offenses were nonviolent "cannot, in and of itself, take him outside the spirit of the Three Strikes law when the defendant is a career criminal with a long and continuous criminal history." (*People v. Strong* (2001) 87 Cal.App.4th 328, 345.) Here, Juarez threatened to shoot the victim in the instant case. Robbery, by definition, involves the use of force or fear. Moreover, in our view, Juarez's current and prior robberies were not minor. His current crime was committed with at least two accomplices, and displayed planning and some degree of sophistication. Taking a substantial sum of money and property from the victim was not an insignificant offense. According to the People's sentencing memorandum, Juarez's prior robberies also involved planning and

the use of accomplices to outnumber the victims. We do not view robberies of this ilk as insignificant simply because no weapon was used and the victims did not suffer injury.<sup>3</sup>

Juarez also argues that his prior criminal history is only one of the factors for the trial court's consideration, and "[a]n appropriate review of the *Williams* factors would have shown appellant should have been treated as though he had not previously been convicted of his prior strike offense." However, Juarez failed to present to the trial court any additional information regarding favorable aspects of his background, character, or prospects. (See *People v. Williams*, *supra*, 17 Cal.4th at p. 161.) In light of this failure, he cannot complain that the court relied primarily on his criminal record and the facts of the current and prior crimes. (*People v. Lee* (2008) 161 Cal.App.4th 124, 128-129.) "Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling . . . ." (*People v. Myers*, *supra*, 69 Cal.App.4th at p. 310; *People v. Cole* (2001) 88 Cal.App.4th 850, 874.) Such is the case here.

### DISPOSITION

The judgment is affirmed.

ALDRICH, J.

We concur:

KLEIN, P. J.  
CROSKEY, J.

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<sup>3</sup> Juarez makes a perfunctory reference to the principle that a sentence that is grossly disproportionate to an offense violates the Eighth Amendment's prohibition on cruel and unusual punishment. It does not appear Juarez intends to raise a cruel and unusual punishment argument separate from his contentions regarding denial of his *Romero* motion. To the extent he does, any such claim is waived because Juarez's point is not set forth under a separate heading, and he does not offer meaningful analysis on the point. (*People v. Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4; *People v. Evans* (2011) 200 Cal.App.4th 735, 756, fn. 12; *People v. Bragg* (2008) 161 Cal.App.4th 1385, 1396-1397; Cal. Rules of Court, rule 8.204(a)(1)(B).)